

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES HAVASSY, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

KELLER WILLIAMS REALTY, INC.,

Defendants.

Case No. 2:21-cv-04608-TJS

PLAINTIFF’S MOTION FOR A SCHEDULING CONFERENCE

Plaintiff James Havassy (“Plaintiff” or “Havassy”), by and through his undersigned counsel, submits his Motion for a Scheduling Conference, and states:

1. Plaintiff respectfully requests the Court set a status conference with the Court to discuss the proceedings and schedule of the case, in light of the procedurally unusual posture with the matter having been transferred back from the Western District of Texas upon a nationwide class settlement entered into by Defendant.

2. The parties last appeared before this Court during a September 21, 2022, conference call. At that time, a nationwide TCPA class action against KWRI was pending before Judge Pitman in the Western District of Texas. During that conference, the Court asked the parties why they had not advised the Court that the nationwide class-action before Judge Pitman was close to settlement.

3. Plaintiff’s counsel advised the Court that they were surprised to learn of this development for the first time. Plaintiff’s counsel further advised the Court that the classes they sought to represent were narrow in scope and could simply be carved out of the class to be settled in the Texas case. Defendant’s counsel advised that such a carve-out would not occur.

4. Shortly thereafter, this Court transferred case to the Western District of Texas pursuant to the first-filed doctrine, as the parties in this case were “covered by” the class definitions in the Western District of Texas case. (Doc. 48, p. 9). Not long after the case was transferred to the Western District of Texas, Defendant entered into a nationwide TCPA class settlement.

5. The settlement, however, did not occur in the Western District of Texas where the case had been pending for many years. Rather, the settlement was preliminarily approved by a state court in Indian River County, Florida less than 30 days after Keller Williams was served with the suit. *See* Ex. A, Preliminary Approval Order, Indian River County Florida. The Indian River Court later granted final approval of the settlement. Ex. B, Final Approval.

6. Notably, the Parties expressly excludes from the settlement the classes Plaintiff seeks to represent in this case. *See* Ex. B, p. 2. Specifically, the settlement excludes:

persons who received a call, or to whom a call was placed, by or on behalf of Peter Hewitt or Kelly Houston and/or which contained a pre-recorded voice identifying Peter Hewitt or Kelly Houston.

Id., p. 2, item 4.

7. Plaintiff’s counsel was not informed of this exclusion by the parties to the nationwide settlement and only learned from reviewing the order that this occurred.

8. After learning of this development, Plaintiff moved the Western District of Texas to transfer the case back to this Court as the original purpose of this Court’s basis for transfer, i.e., that the classes overlapped, no longer existed. The Western District of Texas agreed and transferred the case back to this Court. Doc. No. 51.

9. In light of these developments, Plaintiff’s counsel seeks to commence discovery and to prepare for filing a motion for class certification.

10. Plaintiff's counsel believes a scheduling conference would be the most productive and efficient way to address the various issues and unique procedural posture of the case, and to set forth a schedule to move the case forward.

11. Plaintiff's counsel reached out to Defendant's counsel, Todd Stelter, to discuss this request, and did not receive a response.

WHEREFORE Plaintiff James Havassy respectfully requests that the Court grant his Motion for a Scheduling Conference and schedule such a conference with the parties, and to grant any other relief this Court deems just and proper.

Respectfully submitted,

Butsch Roberts & Associates LLC

/s/ Christopher E. Roberts

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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2023, I served a true and correct copy of the foregoing memorandum on all parties of record via ECF.

/s/ Christopher E. Roberts